

House Amendment 8438

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1 1 Amend House File 722, as passed by the House, as
1 2 follows:
1 3 #1. By striking everything after the enacting
1 4 clause and inserting the following:
1 5 <Section 1. Section 22.7, Code Supplement 2005, is
1 6 amended by adding the following new subsection:
1 7 NEW SUBSECTION. 52. The information contained in
1 8 the information program established in section
1 9 124.510A, except to the extent that disclosure is
1 10 authorized pursuant to section 124.510C.
1 11 Sec. 2. NEW SECTION. 124.510A INFORMATION
1 12 PROGRAM FOR DRUG PRESCRIBING AND DISPENSING.
1 13 Contingent upon the receipt of funds pursuant to
1 14 section 124.510G sufficient to carry out the purposes
1 15 of this division, the board, in conjunction with the
1 16 advisory council created in section 124.510E, shall
1 17 establish and maintain an information program for drug
1 18 prescribing and dispensing. The program shall collect
1 19 from pharmacies dispensing information for controlled
1 20 substances identified pursuant to section 124.510D,
1 21 subsection 1, paragraph "g". The information
1 22 collected shall be used by prescribing practitioners
1 23 and pharmacists on a need-to-know basis for purposes
1 24 of improving patient health care by facilitating early
1 25 identification of patients who may be at risk for
1 26 addiction, or who may be using, abusing, or diverting
1 27 drugs for unlawful or otherwise unauthorized purposes
1 28 at risk to themselves and others, or who may be
1 29 appropriately using controlled substances lawfully
1 30 prescribed for them but unknown to the practitioner.
1 31 For purposes of this division, "prescribing
1 32 practitioner" means a practitioner who has prescribed
1 33 or is contemplating the authorization of a
1 34 prescription for the patient about whom information is
1 35 requested, and "pharmacist" means a practicing
1 36 pharmacist who is actively engaged in and responsible
1 37 for the pharmaceutical care of the patient about whom
1 38 information is requested. The board shall collect,
1 39 store, and disseminate program information consistent
1 40 with security criteria established by rule, including
1 41 use of appropriate encryption or other industry=
1 42 recognized security technology. The board shall seek
1 43 any federal waiver necessary to implement the
1 44 provisions of the program.
1 45 Sec. 3. NEW SECTION. 124.510B INFORMATION
1 46 REPORTING.
1 47 1. Each licensed pharmacy that dispenses
1 48 controlled substances identified pursuant to section
1 49 124.510D, subsection 1, paragraph "g", to patients in
1 50 the state, and each licensed pharmacy located in the
2 1 state that dispenses such controlled substances
2 2 identified pursuant to section 124.510D, subsection 1,
2 3 paragraph "g", to patients inside or outside the
2 4 state, unless specifically excepted in this section or
2 5 by rule, shall submit the following prescription
2 6 information to the program:
2 7 a. Pharmacy identification.
2 8 b. Patient identification.
2 9 c. Prescriber identification.
2 10 d. The date the prescription was issued by the
2 11 prescriber.
2 12 e. The date the prescription was dispensed.
2 13 f. An indication of whether the prescription
2 14 dispensed is new or a refill.
2 15 g. Identification of the drug dispensed.
2 16 h. Quantity of the drug dispensed.
2 17 i. The number of days' supply of the drug
2 18 dispensed.
2 19 j. Serial or prescription number assigned by the
2 20 pharmacy.
2 21 k. Type of payment for the prescription.
2 22 1. Other information identified by the board and
2 23 advisory council by rule.
2 24 2. Information shall be submitted electronically

2 25 in a secure format specified by the board unless the
2 26 board has granted a waiver and approved an alternate
2 27 secure format.

2 28 3. Information shall be timely transmitted as
2 29 designated by the board and advisory council by rule,
2 30 unless the board grants an extension. The board may
2 31 grant an extension if either of the following occurs:

2 32 a. The pharmacy suffers a mechanical or electronic
2 33 failure, or cannot meet the deadline established by
2 34 the board for other reasons beyond the pharmacy's
2 35 control.

2 36 b. The board is unable to receive electronic
2 37 submissions.

2 38 4. This section shall not apply to a prescriber
2 39 furnishing, dispensing, supplying, or administering
2 40 drugs to the prescriber's patient, or to dispensing by
2 41 a licensed pharmacy for the purposes of inpatient
2 42 hospital care, inpatient hospice care, or long-term
2 43 residential facility patient care.

2 44 Sec. 4. NEW SECTION. 124.510C INFORMATION
2 45 ACCESS.

2 46 1. The board may provide information from the
2 47 program to the following:

2 48 a. (1) A pharmacist or prescriber who requests
2 49 the information and certifies in a form specified by
2 50 the board that it is for the purpose of providing
3 1 medical or pharmaceutical care to a patient of the
3 2 pharmacist or prescriber. Neither a pharmacist nor a
3 3 prescriber may delegate program information access to
3 4 another individual.

3 5 (2) Notwithstanding subparagraph (1), a prescriber
3 6 may delegate program information access to another
3 7 licensed health care professional only in emergency
3 8 situations where the patient would be placed in
3 9 greater jeopardy if the prescriber was required to
3 10 access the information personally.

3 11 b. An individual who requests the individual's own
3 12 program information in accordance with the procedure
3 13 established in rules of the board and advisory council
3 14 adopted under section 124.510D.

3 15 c. Pursuant to an order, subpoena, or other means
3 16 of legal compulsion for access to or release of
3 17 program information that is issued based upon a
3 18 determination of probable cause in the course of a
3 19 specific investigation of a specific individual.

3 20 2. The board shall maintain a record of each
3 21 person that requests information from the program.
3 22 Pursuant to rules adopted by the board and advisory
3 23 council under section 124.510D, the board may use the
3 24 records to document and report statistical
3 25 information.

3 26 3. Information contained in the program and any
3 27 information obtained from it, and information
3 28 contained in the records of requests for information
3 29 from the program, is privileged and strictly
3 30 confidential information. Such information is not a
3 31 public record pursuant to chapter 22, and is not
3 32 subject to discovery, subpoena, or other means of
3 33 legal compulsion for release except as provided in
3 34 this division. Information from the program shall not
3 35 be released, shared with an agency or institution, or
3 36 made public except as provided in this division.

3 37 4. Information collected for the program shall be
3 38 retained in the program for four years from the date
3 39 of dispensing. The information shall then be
3 40 destroyed.

3 41 5. A pharmacist or other dispenser making a report
3 42 to the program reasonably and in good faith pursuant
3 43 to this division is immune from any liability, civil,
3 44 criminal, or administrative, which might otherwise be
3 45 incurred or imposed as a result of the report.

3 46 6. Nothing in this section shall require a
3 47 pharmacist or prescriber to obtain information about a
3 48 patient from the program. A pharmacist or prescriber
3 49 does not have a duty and shall not be held liable in
3 50 damages to any person in any civil or derivative
4 1 criminal or administrative action for injury, death,
4 2 or loss to person or property on the basis that the
4 3 pharmacist or prescriber did or did not seek or obtain
4 4 or use information from the program. A pharmacist or
4 5 prescriber acting reasonably and in good faith is

4 6 immune from any civil, criminal, or administrative
4 7 liability that might otherwise be incurred or imposed
4 8 for requesting or receiving or using information from
4 9 the program.

4 10 7. The board shall not charge a fee to a pharmacy,
4 11 pharmacist, or prescriber for the establishment,
4 12 maintenance, or administration of the program,
4 13 including costs for forms required to submit
4 14 information to or access information from the program,
4 15 except that the board may charge a fee to an
4 16 individual who requests the individual's own program
4 17 information. A fee charged pursuant to this
4 18 subsection shall not exceed the actual cost of
4 19 providing the requested information and shall be
4 20 considered a repayment receipt as defined in section
4 21 8.2.

4 22 Sec. 5. NEW SECTION. 124.510D RULES AND
4 23 REPORTING.

4 24 1. The board and advisory council shall jointly
4 25 adopt rules in accordance with chapter 17A to carry
4 26 out the purposes of, and to enforce the provisions of,
4 27 this division. The rules shall include but not be
4 28 limited to the development of procedures relating to:

4 29 a. Identifying each patient about whom information
4 30 is entered into the program.

4 31 b. An electronic format for the submission of
4 32 information from pharmacies.

4 33 c. A waiver to submit information in another
4 34 format for a pharmacy unable to submit information
4 35 electronically.

4 36 d. An application by a pharmacy for an extension
4 37 of time for transmitting information to the program.

4 38 e. The submission by an authorized requestor of a
4 39 request for information and a procedure for the
4 40 verification of the identity of the requestor.

4 41 f. Use by the board or advisory council of the
4 42 program request records required by section 124.510C,
4 43 subsection 2, to document and report statistical
4 44 information.

4 45 g. Including all Schedule II controlled substances
4 46 and those substances in Schedules III and IV that the
4 47 advisory council and board determine can be addictive
4 48 or fatal if not taken under the proper care and
4 49 direction of a prescriber.

4 50 h. Access by a pharmacist or prescriber to
5 1 information in the program pursuant to a written
5 2 agreement with the board and advisory council.

5 3 i. The correction or deletion of erroneous
5 4 information in the program.

5 5 2. Beginning January 1, 2007, and annually by
5 6 January 1 thereafter, the board and advisory council
5 7 shall present to the general assembly and the governor
5 8 a report prepared consistent with section 124.510E,
5 9 subsection 3, paragraph "d", which shall include but
5 10 not be limited to the following:

5 11 a. The cost to the state of implementing and
5 12 maintaining the program.

5 13 b. Information from pharmacies, prescribers, the
5 14 board, the advisory council, and others regarding the
5 15 benefits or detriments of the program.

5 16 c. Information from pharmacies, prescribers, the
5 17 board, the advisory council, and others regarding the
5 18 board's effectiveness in providing information from
5 19 the program.

5 20 Sec. 6. NEW SECTION. 124.510E ADVISORY COUNCIL
5 21 ESTABLISHED.

5 22 An advisory council shall be established to provide
5 23 oversight to the board and the program and to manage
5 24 program activities. The board and advisory council
5 25 shall jointly adopt rules specifying the duties and
5 26 activities of the advisory council and related
5 27 matters.

5 28 1. The council shall consist of eight members
5 29 appointed by the governor. The members shall include
5 30 three licensed pharmacists, four physicians licensed
5 31 under chapter 148, 150, or 150A, and one licensed
5 32 prescriber who is not a physician. The governor shall
5 33 solicit recommendations for council members from Iowa
5 34 health professional licensing boards, associations,
5 35 and societies. The license of each member appointed
5 36 to and serving on the advisory council shall be

5 37 current and in good standing with the professional's
5 38 licensing board.

5 39 2. The council shall advance the goals of the
5 40 program, which include identification of misuse and
5 41 diversion of controlled substances identified pursuant
5 42 to section 124.510D, subsection 1, paragraph "g", and
5 43 enhancement of the quality of health care delivery in
5 44 this state.

5 45 3. Duties of the council shall include but not be
5 46 limited to the following:

5 47 a. Ensuring the confidentiality of the patient,
5 48 prescriber, and dispensing pharmacist and pharmacy.

5 49 b. Respecting and preserving the integrity of the
5 50 patient's treatment relationship with the patient's
6 1 health care providers.

6 2 c. Encouraging and facilitating cooperative
6 3 efforts among health care practitioners and other
6 4 interested and knowledgeable persons in developing
6 5 best practices for prescribing and dispensing
6 6 controlled substances and in educating health care
6 7 practitioners and patients regarding controlled
6 8 substance use and abuse.

6 9 d. Making recommendations regarding the continued
6 10 benefits of maintaining the program in relationship to
6 11 cost and other burdens to the patient, prescriber,
6 12 pharmacist, and the board. The council's
6 13 recommendations shall be included in reports required
6 14 by section 124.510D, subsection 2.

6 15 e. One physician and one pharmacist member of the
6 16 council shall include in their duties the
6 17 responsibility for monitoring and ensuring that
6 18 patient confidentiality, best interests, and civil
6 19 liberties are at all times protected and preserved
6 20 during the existence of the program.

6 21 4. Members of the advisory council shall be
6 22 eligible to request and receive actual expenses for
6 23 their duties as members of the advisory council,
6 24 subject to reimbursement limits imposed by the
6 25 department of administrative services, and shall also
6 26 be eligible to receive a per diem compensation as
6 27 provided in section 7E.6, subsection 1.

6 28 Sec. 7. NEW SECTION. 124.510F EDUCATION AND
6 29 TREATMENT.

6 30 The program for drug prescribing and dispensing
6 31 shall include education initiatives and outreach to
6 32 consumers, prescribers, and pharmacists, and shall
6 33 also include assistance for identifying substance
6 34 abuse treatment programs and providers. The board and
6 35 advisory council shall adopt rules, as provided under
6 36 section 124.510D, to implement this section.

6 37 Sec. 8. NEW SECTION. 124.510G DRUG INFORMATION
6 38 PROGRAM FUND.

6 39 The drug information program fund is established to
6 40 be used by the board to fund or assist in funding the
6 41 program. The board may make deposits into the fund
6 42 from any source, public or private, including grants
6 43 or contributions of money or other items of value,
6 44 which it determines necessary to carry out the
6 45 purposes of this division. Moneys received by the
6 46 board to establish and maintain the program must be
6 47 used for the expenses of administering this division.
6 48 Notwithstanding section 8.33, amounts contained in the
6 49 fund that remain unencumbered or unobligated at the
6 50 close of the fiscal year shall not revert but shall
7 1 remain available for expenditure for the purposes
7 2 designated in future years.

7 3 Sec. 9. NEW SECTION. 124.510H PROHIBITED ACTS ==
7 4 PENALTIES.

7 5 1. FAILURE TO COMPLY WITH REQUIREMENTS. A
7 6 pharmacist, pharmacy, or prescriber who knowingly
7 7 fails to comply with the confidentiality requirements
7 8 of this division or who delegates program information
7 9 access to another individual is subject to
7 10 disciplinary action by the appropriate professional
7 11 licensing board. A pharmacist or pharmacy that
7 12 knowingly fails to comply with other requirements of
7 13 this division is subject to disciplinary action by the
7 14 board. Each licensing board may adopt rules in
7 15 accordance with chapter 17A to implement the
7 16 provisions of this section.

7 17 2. UNLAWFUL ACCESS, DISCLOSURE, OR USE OF

7 18 INFORMATION. A person who intentionally or knowingly
7 19 accesses, uses, or discloses program information in
7 20 violation of this division, unless otherwise
7 21 authorized by law, is guilty of a class "D" felony.
7 22 This section shall not preclude a pharmacist or
7 23 prescriber who requests and receives information from
7 24 the program consistent with the requirements of this
7 25 chapter from otherwise lawfully providing that
7 26 information to any other person for medical or
7 27 pharmaceutical care purposes.
7 28 Sec. 10. Sections 124.510A through 124.510H are
7 29 repealed June 30, 2009.
7 30 Sec. 11. EFFECTIVE DATE. This Act, being deemed
7 31 of immediate importance, takes effect upon enactment.>
7 32 #2. Title page, by striking lines 1 through 3 and
7 33 inserting the following: <An Act providing for the
7 34 establishment of an information program for drug
7 35 prescribing and dispensing, providing penalties, and
7 36 providing an effective date.>
7 37 #3. By renumbering as necessary.
7 38 HF 722.S
7 39 rn/cc/26